IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29/08/2002

CORAM

THE HONOURABLE MR. JUSTICE P.K. MISRA

W.P.NO. 6951 OF 1995
and
W.P.M.P.No. 11127 OF 1995

Madras Metropolitan Sewerage
Board Employees Progressive Union,
rep. by its Secretary
Chinniah,
3, Pandaram Street, Madras 7. .. Petitioner

-Vs-

1. The Madras Metropolitan Water
Supply and Sewerage Board,
rep. by its Chairman and
Managing Director,
No.1, Pumping Station Road,
Chindaripet, Madras 600 002.

2. The State of Tamil Nadu,
rep. by the Secretary to Govt.,
Municipal Administration and
Water Supply Department,
Fort St. George, Madras 9. .. Respondents

Petition filed under Article 226 of the Constitution of India for the
issuance of Writ of Certiorarified Mandamus as stated therein.

For Petitioner : Ms. Naga Siva

For Respondents : Mr.B. Shanthakumar

:J U D G M E N T

This writ petition has been filed by Madras Metropolitan
Sewerage Board Employees Progressive Union against the Madras Metropolitan
Water Supply and Sewerage Board and the State of Tamil Nadu for quashing the
notification dated 29.3.1995 issued by the first respondent calling for
tenders from contractors to undertake the operation of maintenance work and
water supply system of the first respondent Board.

2. The first respondent is a statutory Body constituted under

the Madras Metropolitan Water Supply and Sewerage Act. The purpose and object of the first respondent Board is to deal with water supply and sewerage services. It is the case of the petitioner union that from inception only permanent and regular workers are being employed to undertake the operation and maintenance of pumping stations. However, in 1995, the first respondent Board has issued a notice calling for tenders from contractors to engage them in the matter relating to operation and maintenance of pumping stations. The petitioner has challenged the aforesaid tender notice mainly on the ground that this will introduce the contract labour system which is intended to be abolished under The Contract Labour (Regulation and Abolition) Act, 1970. It is also contended that entrustment of work through contract labour system is likely to affect the service conditions of the existing employees and they are likely to be retrenched and their prospect of promotion is likely to be affected and as such no such notice could have been issued in violation of Section 9A of the Industrial Disputes Act.

3. A counter affidavit has been filed on behalf of the first respondent wherein it is indicated that under Section 6(1) and 6(2)(ix) of the Madras Metropolitan Water Supply and Sewerage Act, 1978, under which the Board has been established, the Board is authorised to entrust any of its work to contractors and accordingly in 1992 the work of operation and maintenance of pumping stations have been entrusted to contractors which having been found to be efficient and economical and on the basis of such beneficial experience, the Board has decided to entrust the operation and maintenance of other pumping stations to the contractors. It has been further submitted that neither in the past nor in the present the Board has decided to retrench any of the existing employees and surplus employees if any would be deployed in the appropriate department.

4. Learned counsel appearing for the petitioner has placed reliance upon the object and provisions contained in the Contract Labour (Regulation and Abolition) Act, 1970 and has submitted that the intention of the aforesaid Central Act is to abolish the contract labour system in course of time and by inviting contractors to the work, the Board is taking a retrogade step. Learned counsel has placed reliance upon the report of the National Commission on Labour and the decisions of the Supreme Court reported in A.I.R. 1960 SC 948 (THE STANDARDVACCUM REFINING CO. OF INDIA LIMITED Vs. THEIR WORKMEN AND ANOTHER) and 1987(1) L.L.J.345 (CATERING CLEANERS OF SOUTHERN RAILWAY vs. UNION OF INDIA AND ANOTHER AND OTHERS) in support of his contention that contract labour system is primitive and an undesirable system giving rise to pernicious practice of exploiting labour. It has been submitted that in view of the aforesaid avowed intention under the Contract Labour (Regulation and Abolition) Act,1970, taking recourse to such a system by the Board, particularly when the work is being done through the existing employees, is arbitrary and should not be countenanced.

5. It is no doubt true that the Supreme Court has repeatedly pointed out about undesirability of continuing contract labour system. However, as rightly pointed out by the learned counsel appearing for the Board that the Contract Labour (Regulation and Abolition) Act has not abolished all contract labours. It has merely contained an enabling provision in the shape of Section 10, where under the appropriate Government is authorised to issue

appropriate notification for abolition of the contract labour system. On the other hand as submitted by the learned counsel for the petitioner the very Act under which the Board has been constituted, that is to say the Madras Metropolitan Water Supply and Sewerage Act, 1978 contemplates that functions of the Board can be carried out by engaging contractors. In the absence of any specific prohibition contained in the Contract Labour (Regulation and Abolition) Act and in the absence of notification by the appropriate Government prohibiting employment of contract labour in the particular concern, it is futile for the petitioner to contend that the notification issued by the Board inviting tenders for award of contract relating to operation and maintenance of pumping stations is illegal or even arbitrary.

6. One of the main contentions of the petitioner is to the effect that the employees under the Board are likely to lose their services and their promotion avenues would be diminished by engaging contract labour in some of the works. In the counter affidavit filed on behalf of the Board, it has been specifically stated
" . . . At present 35 sewage pumping stations are operated and maintained through contractors selected by inviting competitive tenders. The contract is for carrying out various works which have to be performed daily and at specified intervals; repairs, preventive maintenance etc. By this arrangement, no employee retrenchment was contemplated besides the Board being able to save 40% of the cost. Ultimately the cost advantage is to benefit of the general public who are financing the operations of the Board through water and sewerage taxes and water supply charges. . . ."

" . . . As has been contended earlier, there will not be any retrenchment of employees consequent on privatisation of operation and maintenance of 55 sewage pumping stations which are now challenged in the High Court."

". . . The petitioner's contention in para 4 is wrong. Due to privatisation of operation and maintenance of pumping stations, the employees found to be surplus will be redeployed according to the nature of job performed already by them and there will not be any retrenchment from employment. The Operation and Maintenance of Sewage Pumping Stations through private agencies was in voue in Madras Metropolitan Water Supply and Sewerage Board, since 1992 and there are at present 35 pumping stations operated and mai ntained through private agencies on privatisation."

7. In view of the above mentioned assertions at several places in the counter that there would not be any retrenchment on account of entrusting any work to any contractor, there is no valid justification for the apprehension expressed by the petitioner regarding retrenchment of the existing workers. In order to allay the apprehension of the petitioner, it is hereby made clear that even though any contractor would be engaged for undertaking the maintenance work, no existing worker would be retrenched on that account and all existing workers are to be accommodated suitably.

8. Learned counsel for the petitioner has also expressed his

apprehension that promotional avenues of various workers would be clogged. This aspect has also been highlighted by the first respondent in the additional affidavit filed by them. In the counter affidavit the first respondent has submitted as follows :-

. . . Due to developmental activities and expansion of various schemes under progress in particular Krishna Water Supply Scheme and New Veeranam Water Supply Scheme, the scope of promotional opportunities are more and the employees will be considered for higher posts. Hence the contention of the petitioner that due to privatisation the employees will be deprived of their promotional chances and the legal heirs requiring employment assistance will be affected is not correct."

In the course of hearing of the writ petition, the counsel for the respondent Board has also reiterated that an appropriate committee would go into the question of promotion and various aspects of the workers.

9. Keeping in view the averments in the counter and the submissions of the learned counsel for the respondent it is also made clear that the respondent Board as an ideal employer should go into the question of promotion of the existing employees and should take appropriate steps to keep sufficient promotional avenues open with a view to prevent any stagnation and inevitable frustration.

10. Learned counsel for the petitioner has also contended that by the proposed action, the provisions contained in Section 9-A of the Industrial Disputes are being violated. As already indicated, the employees are not likely to be retrenched nor otherwise adversely affected due to engagement of any contractor. Having regard to the facts and circumstances of the case, the contention that there would be a change in the conditions of the service of the existing employees attracting the provisions contained in Section 9-A of the Industrial Disputes Act is untenable and cannot be accepted.

11. For the aforesaid reasons, I do not find any merits in the writ petition, which is accordingly disposed of subject to the observations made earlier relating to the question of continuous employment of the employees' concerned and scope for their promotion. There is no order as to costs.

29-08-2002

Index : Yes
Internet : Yes
dpk

To

1. The Madras Metropolitan Water
Supply and Sewerage Board,
rep. by its Chairman and
Managing Director,
No.1, Pumping Station Road,
Chindaripet, Madras 600 002.

2. The State of Tamil Nadu,
rep. by the Secretary to Govt.,
Municipal Administration and
Water Supply Department,
Fort St. George, Madras 9.

P.K. MISRA, J.

Judgment in
W.P.NO. 6951 OF 1995
and
W.P.M.P.No. 11127 OF 1995